

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARION MITCHELL,

Plaintiff,

Case No. 13-10178

v.

HONORABLE AVERN COHN

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

_____ /

ORDER ADOPTING REPORT AND RECOMMENDATION (Doc. 24)
AND
GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO A REMAND
(Doc. 20)
AND
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (Doc. 22)
AND
REMANDING MATTER FOR FURTHER ADMINISTRATIVE PROCEEDINGS

I.

This is a Social Security case. Plaintiff Marian Mitchell appeals from the final determination of the Commissioner of Social Security (Commissioner) that she is not disabled and therefore not entitled to disability insurance benefits. The matter was referred to a magistrate judge for all pretrial proceedings. Plaintiff and the Commissioner filed cross motions for summary judgment. Although plaintiff initially moved for a reversal and an award of benefits, plaintiff later alternatively requested a remand for further proceedings. See Doc. 3 at p. 6.

The magistrate judge issued a report and recommendation (MJRR), recommending that plaintiff's motion be granted and the Commissioner's motion be

denied. Specifically, the magistrate judge recommends that the matter be remanded under sentence four¹ to the Administrative Law Judge (ALJ) so that the ALJ further consider the findings of Dr. Leno, provide additional support showing plaintiff's ability to engage in skilled work and, if necessary, revisit the hypothetical. See MJRR at p.13.

II.

Neither party has filed objections to the MJRR and the time for filing objections has passed. The failure to file objections to the report and recommendation waives any further right to appeal. Smith v. Detroit Federation of Teachers Local 231, 829 F.2d 1370, 1373 (6th Cir.1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motions. Thomas v. Arn, 474 U.S. 140, 149 (1985).

However, the Court has reviewed the MJRR and agrees with the magistrate judge. Accordingly, the findings and conclusions of the magistrate judge are ADOPTED as the findings and conclusions of the Court. Plaintiff's motion for summary judgment is GRANTED IN PART AND DENIED IN PART. The Commissioner's motion for summary judgment is DENIED.

¹ "A district court's authority to remand a case for further administrative proceedings is found in 42 U.S.C. § 405(g)." Hollon v. Commissioner, 447 F.3d 477, 482-83 (6th Cir. 2006). The statute permits only two types of remand: a sentence four (post-judgment) remand made in connection with a judgment affirming, modifying, or reversing the Commissioner's decision; and a sentence six (pre-judgment) remand where the court makes no substantive ruling as to the correctness of the Commissioner's decision. Hollon, 447 F.3d at 486 (citing Melkonyan v. Sullivan, 501 U.S. 89, 99-100, 111 S.Ct. 2157, 115 L.Ed.2d 78 (1991)).

This matter is REMANDED for further administrative proceedings consistent with the MJRR.

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: March 25, 2014

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, March 25, 2014, by electronic and/or ordinary mail.

S/Sakne Chami
Case Manager, (313) 234-5160